

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4315 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJESH @ JITU @ JITENDRA

BABULAL SONI

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA S DUTTA for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/07/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 22/3/1997 rendered by the respondent no. 1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985) (for short 'the PASA Act').

2. The grounds on which the impugned order of detention has been passed appear at Annexure-C to the petition. They inter-alia indicate that the petitioner by himself and with the aid of other associates has been indulging in criminal and anti-social activities of committing robbery and creating atmosphere of fear. The grounds of detention inter-alia show three registered cases as particularised below :-

C.R.No.	U/Ss.	Remarks
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354/94 of	Shaher 394,	114 of the IPC Pending in Court
Kotda Police	and 135(1) of the	
Station.	B.P. Act.	

109/96 of	397, 394, 342, 188 of -do-	
Sardarnagar	the IPC and 135(1) of	
Police Station	the B.P. Act	

216/96 of	307, 342 & 34 of the -do-	
Ahmedabad IPC	and 135(1) of the	
Railway Police	B.P. Act.	
Station.		

The last offence was registered on 18/9/1996 and the petitioner arrested on the same day. However, he was released on bail on 7/2/1997.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of four witnesses have been relied upon. They speak about two incidents dated 17/7/1996 and 15/8/1996 indicating beating of concerned witnesses in public resulting in fear in the mind of people.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a 'dangerous person' within the meaning of section 2(c) of the PASA Act.

5. The petitioner has challenged the impugned order of detention on number of grounds, inter-alia, on the ground that the incidents and/or the cases against the detenu had taken place respectively in the year 1994 and 1996, the last being of November 1996. Hence, the order of detention has been passed on 18/9/1996. The petitioner was enlarged on bail on 7/2/1997 in so far as

last mentioned case is concerned. It has, therefore, been the case of the petitioner that there is total absence of live link between the dates of incidents which formed the basis of impugned order of detention and the date on which the detention order has been passed. Thus, on account of vice of delay the subjective satisfaction arrived at by the detaining authority stood vitiated. In support of this submission reliance has been placed on a decision of this Court rendered on 27/12/1996 (Coram ; N.N. Mathur, J.) in Special Civil Application No. 8631 of 1996. After making a brief resume of the decisions of the Apex Court this Court observed as under :

"This unexplained delay makes a ground of detention not proximate vitiating the order of detention itself."

This Court also observed that it would not be necessary to state the facts with respect to the unregistered cases. The Court, therefore, preferred to adopt the course adopted by the Supreme Court in the case of Jagan Nath Biswas V/s. The State of West Bengal reported in AIR 1975 SC 1516, Anand Prakash V/s. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth V/s. S. Ramamurthy reported in 1993 (2) Suppl. SCC 61. This Court, therefore, quashed the order of detention in that case.

6. No affidavit-in-reply has been filed. It has, however, been submitted that in so far as C.R. No. 109/96 is concerned the petitioner was released on bail on 14/3/1997 and, therefore, there is no delay. It has been submitted in reply that even if the petitioner was in judicial custody, detention order could have been passed by saying that the petitioner could be enlarged on bail at any point of time.

7. In the facts and the circumstances of the present case and bearing in mind the decision of the Division Bench of this Court (Coram : S.M. Soni & S.D. Shah, JJ., Per Soni, J.) in Special Criminal Application No. 1060 of 1993, the impugned order of detention shall have to be quashed on account of unexplained delay.

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the ground of delay, it is not necessary to deal with the other grounds. Hence, following order is passed :-

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu - Rajesh alias Jitu alias Jitendra Babulal Soni shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

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